IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5192 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT MAZDOOR SABHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5192 of 1999

MR MUKUL SINHA for Petitioner No. 1

M/S PATEL ADVOCATES for Respondent No. 1

MR KS NANAVATI, SR. COUNSEL FOR SINGHI & BUCH ASSO. for Respondent No. 2

MR ASIM J PANDYA, ADDL. CENTRAL GOVT. STANDING COUNSEL for Respondent No. 3-4

MR KM PATEL for Respondent No. 5

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/10/2002

CAV JUDGEMENT

1. In this petition several controversies are involved, but the main controversy is which is the 'appropriate Government' under Section 2 (1) (a) of the Contract Labour (Regulation and Abolition) Act (hereinafter referred to as 'the Act') in relation to respondent no. 2 i.e. Indian Farmers Fertilizers Cooperative Ltd. (hereinafter referred to as 'IFFCO'). Rest of the controversies are incidental. To resolve these controversies certain relevant facts are required to be stated. They are as under :-

2. IFFCO is a cooperative society. It was initially formed under the Multi-Unit Cooperative Societies Act and after repeal of the said Act under the provisions of the Multi State Cooperative Societies Act. Its area of operation extends to the whole of the Indian union. The main objects for which IFFCO has been formed and registered as a multi - unit cooperative society are as under :-

"The object of IFFCO shall be to promote the economic interest of its members by undertaking manufacture of chemical, fertilizers and allied products/bye products and their conversion, storage, transportation and marketing, undertake manufacture/processing of pesticides, seeds, agricultural machinery and implements and other agricultural inputs and their storage, transportation and marketing and undertake such other activities which are conducive and incidental thereto.

(B) In furtherance of above objects IFFCO may undertake one or more of the following activities :-

(i) to set up plant or plants for manufacture of chemical, fertilizers and allied products/bye products,

(ii) to undertake production, processing and manufacture of insecticides, pesticides, deeds, agricultural machinery and implements and other agricultural production, requisites by setting up or taking on lease manufacturing unit either directly or in collaboration with or in the cooperative institution/public sector enterprises or any other agency.

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(ix) to promote and organise other cooperative societies in the field of manufacturing, production and marketing of fertilizers and other agricultural production, requisites and agricultural and rural development."

IFFCO is having its units and production plants at different places such as Phulpur in U.P., Kandla in District Kachchha and Kalol in District Mehsana in Gujarat.

2.1. The petitioner is a registered trade union and according to it, it is having majority of the workmen engaged by the IFFCO for the operation of loading and unloading of urea filled bags to be packed, despatched in railway wagons and trucks.

2.2. IFFCO engages contract labour for the purpose of stacking the urea bags on the platform and loading and unloading them in and from railway wagons and the trucks. According to the petitioner, in the year 1984 the IFFCO Karmachari Sangh moved the State Government as the appropriate Government under section 10 of the Act for abolition of the contract labour system in the operation of stacking and loading/unloading of urea bags and also for certain other operations in IFFCO. The said case of the IFFCO Karmachari Sangh came to be referred as Reference No. 3/1984 before the State Advisory Board constituted u/S. 10 of the Act. As per the information of the petitioner, in the year 1986 the said Advisory Board recommended to the State Government abolition of contract labour system in the operations of stacking and loading and unloading of urea bags. However, the State Government did not act on the recommendation of the Advisory Board for considerable time. With the result the system of engaging contract labour in those operations continued. Some time in the year 1995 the concerned workmen became members of the petitioner and the petitioner thereafter took adequate interest in the direction of getting the system of contract labour abolished in these operations. It, therefore, gave notice to the Secretary of the Labour and Employment Department of the State Government dated 14th August, 1995 with a request to abolish the system of engaging contract labour in the operations of stacking and loading and unloading of urea bags in transport. In the said notice it was stated that under the guise of contract labour the concerned workmen were being exploited and, therefore their plight was miserable. According to the petitioner, this notice also did not invoke any response from the State Government and

ultimately it was constrained to file Special Civil Application No. 8686 of 1995 before this Court praying for direction on the State Government to decide the issue of abolition of the contract labour system within a definite time frame schedule. This Court, therefore, vide order dated 17th November, 1995 directed the State Government to decide the application which was submitted by the petitioner in accordance with the provisions of section 10 of the Act within a period of 4 weeks from the date of service of the said order on the State Government. In view of the aforesaid order of this Court, the State Government issued notification dated 27th December, 1995 whereby in certain operations in IFFCO engagement of contract labour was prohibited. However, the said notification did not include the operation of loading and unloading of the urea bags into the means of transportation for the final despatch. Since, according to the petitioner, the main activity wherein the abolition of contract labour was most needed was not included in the notification dated 27th December, 1995, it again approached this Court challenging the said notification by filing Special Civil Application No. 3066 of 1996. In the same way IFFCO also challenged the said notification by filing Special Civil Application No. 243 of 1996. In these petitions the common consent order was passed on 1st July, 1996, whereby this Court directed the State Government to reconsider the issue of prohibiting contract labour system as per application under Reference No. 3/1984, after affording opportunity of hearing to the parties. Another notification was issued by the State Government dated 18th October, 1996. This notification also remained on the line of the earlier notification wherein the contract labour system was abolished in the staking operation alone of the urea bags, excluding the operation of loading and unloading thereof for transport. This again resulted into filing of petitions from both the sides, namely, the petitioner and IFFCO. The petitioner challenged the said notification by filing Special Civil Application No. 8580 of 1996 and IFFCO challenged it by filing Special Civil Application No. 10116/1996. Those petitions alongwith one another Special Civil Application No.476/1997 were disposed of by a common judgment dated 6th March, 1998 [Coram : M.R. Calla, J.]. In that judgment direction to the State Government was given by this Court to reconsider the question of inclusion of operation of loading and unloading of urea bags in the notification keeping in view the said judgment. Ultimately another notification was issued by the State Government on 3rd June, 1998 amending its earlier notification dated 18th October, 1996 and in the amended

notification it included the operation of loading and unloading of urea bags in the railway wagons and the trucks.

2.3. IFFCO challenged the amended notification by filing Special Civil Application No. 4950 of 1998 before this Court, which was dismissed by this Court [Coram : H.L. Gokhale, J.] by judgment dated 11th September, 1998. Against the said judgment, IFFCO has preferred Letters Patent Appeal No. 1281 of 1998 which is pending before the Division Bench for disposal. However, no interim relief has been granted in the same. Similarly, against the judgment of M.R. Calla, J. the Letters Patent Appeals Nos. 749 of 1998, 762 of 1998 and 780 of 1998 have been filed and the same are pending final disposal and in that also no interim relief has been granted in favour of the IFFCO.

2.4. According to the petitioner, inspite of the abolition of contract labour system in the operations of stacking and; loading and unloading of urea bags, IFFCO availed the service of contractor to carry on these operations by contriving a device to approach the Central Government and obtain its permission for that purpose. It is further averred that IFFCO also obtained registration certificate under the Act from the said authority and managed to get the notifications issued by the Labour Commissioner, State of Gujarat dated 23rd March, 1998 and 17th February, 1999, declaring that for certain industries in Gujarat the appropriate Government was the Central Government for the purpose of various labour legislations including the Act. It is in these circumstances, the licences granted by respondent no. 3 i.e. the Registration and Licencing Authority (Central) under the Act at Ahmedabad are challenged. The challenge is based on the ground that the Central Government is not the appropriate Government vis-a-vis IFFCO and it has no authority to do so.

2.5. As against that, the IFFCO has put forward its case stating that vis-a-vis IFFCO power of the State Government to act as appropriate Government in relation to the provisions of the Act has come to an end. According to him, IFFCO, in accordance with certain directions issued by the State Government as well as the Central Government in light of the judgment of the Apex Court rendered in the case of Air India Staturoty Corporation v/s. United Labour Union reported in (1997) 9 S.C.C. page 377 (hereinafter referred to as 'Air India Statutory Corporation or AISC's case), has continued to engage contract labour under the licence that was granted

by the Registration and Licencing Authority (Central). The State Government , therefore, has no authority to issue notifications for abolition of system of engaging contract labour in the matter of stacking and loading and unloading of urea bags in IFFCO. IFFCO has further stated that it is the Central Government which is the appropriate Government and when the Licencing Authority under the Central Government has granted licence, no illegality is committed by IFFCO in engaging contract labour for the aforesaid operations. It has also stated that the question with regard to the validity of the notifications issued by the State Government is still not finally decided since it is the subject matter of Letters Patent Appeals pending before the Division Bench of this Court and, therefore, it cannot be said that for IFFCO in the operations of stacking and loading and unloading there is abolition of the system of contract labour under the Act. IFFCO's case further is that the activity of IFFCO is to manufacture chemicals and fertilizers such as urea and the activities of stacking and loading and unloading of urea bags are merely ancillary to the main activity. These activities namely, stacking and loading and unloading are not of permanent or perennial nature as they entirely depend on the factors such as availability of means of transport, demand of fertilizer in the market, production, etc. In that view of the matter, it is not feasible or practical to have permanent employees to carry on those operations and only engaging contract labour is workable solution. It has also stated that since the IFFCO is not a 'State' or 'instrumentality of State' under Article 12 of the Constitution of India, a petition of this nature against it cannot be entertained in law.

2.6. So far the Union Government i.e. respondents nos. 3 and 4 are concerned, their say is that in view of the decision of the Apex Court in Air India Statutory Corporation's case the Central Government is the appropriate Government in relation to various labour legislations including the Act for certain industries in Gujarat including the IFFCO and respondent no. 3 was, therefore, justified in issuing licence in favour of the contractor as well as registration to the IFFCO.

2.7. The same stand has been taken by respondent no. 5 i.e. contractor, whose labour has been engaged by the IFFCO to carry out the aforesaid operations.

3. In this background of the case, the

controversies that have arisen can be stated as under :-

(I) which is the appropriate Government vis-a-vis IFFCO under the Act,

(II) what are the effects of abolition of the contract labour system pursuant to notification issued by the State Government ,

(III) whether the Central Government could issue the licences under the provisions of the Act when the question with regard to the validity of the notifications issued by the State Government was pending final disposal before the Division Bench of this Court in the Letters Patent Appeals without approaching this Court and seeking its permission.

(IV) In case it is held that Central Government is not the 'appropriate Government qua the IFFCO, what will be its effect on the contract labour engaged by IFFCO in the operations of stacking and loading & unloading of urea bags between the period from the date of abolition by the State Government and date of the finding given by this Court.

3.1. There are other controversies also, but they are not required to be highlighted here as they are merely offshoots of the aforesaid major controversies.

4. I have heard Mr. Mukul Sinha, learned counsel for the petitioner as well as Mr. K.S. Nanavati, learned Senior Advocate for respondent no. 2 and Mr. K.M. Patel, learned counsel for respondent no. 5 - the contractor whose contract has come to an end during the course of hearing of this petition and Mr. Asim J. Pandya, learned Addl. Central Government Standing Counsel appeared for respondents nos. 3 and 4.

4.1. Mr. Mukul Sinha for the petitioner has submitted before me that considering the long history of this case and the fact that all throughout it is the State Government which has remained as the 'appropriate Government' under the provisions of the Act vis-a-vis IFFCO, the Central Government cannot be said to be the 'appropriate Government' and the sudden change has been brought about only with a view to favour IFFCO and to circumvent State Government's notification of abolishing contract labour and also the judgments of this Court upholding the State Government's action. He has further submitted that the definition of 'appropriate Government' under section 2 (1)(a) of the Act, is as per the definition of the 'appropriate Government' given in the

Industrial Disputes Act, and IFFCO which is a cooperative formed under the provisions of the Multi-State Cooperative Societies Act, does not fall in any of the categories of the industries mentioned therein. Mr. Sinha has contended that IFFCO is not an industry carried on by or under the authority of the Central Government nor it is a railway company nor it is named in the list of controlled industry as may be specified in this behalf by the Central Government nor it is an industry named in the definition and hence the Central Government cannot be the 'appropriate Government' for it under the Act. He has further submitted that with the judgment rendered by the Apex Court in the case of Steel Authority of India v/s. National Union Water Front Workers reported in (2001) 7 S.C.C. p. 1 (SAIL's case for short) the ratio laid down by Air India Statutory Corporation's case with regard to appropriate Government stands overruled. He further contended that now law laid down by SAIL's decision prevails and as per it IFFCO cannot have Central Government as its appropriate Government. He has submitted that apart from this, even according to ratio laid down by AISC's case Central Government cannot be the appropriate Government because IFFCO is not an instrumentality of the State. Lastly on this count he has submitted that in relation to IFFCO, when the matter is pending before this Court for considering the validity of the power of the State Government to issue notifications under the Act prohibiting abolition of contract labour in certain operations whether it was proper for the Central Government to issue such notifications without approaching this Court and without obtaining any clarification from this Court. This amounted to showing gross disrespect to this Court especially when the learned Single Judges have upheld the validity of these notifications.

4.2. As against that, Mr. K.S. Nanavati, the learned counsel for the respondent - IFFCO has submitted that in view of the notifications declaring the Central Government as the 'appropriate Government' it has employed contract labour in the operations of stacking and loading and unloading of the urea bags. The concerned contractor has also obtained necessary licence from the Central Government and engaging contract labour in the aforesaid operations by the IFFCO cannot be said to be illegal. He has further submitted that considering the circumstances of the case, so far IFFCO is concerned, it is the Central Government, which is the appropriate Government and not the State Government.

4.3. Mr. K.M. Patel, the learned counsel for

the contractor has stated that in view of the development to the effect that his client is no more in the picture as his contract has come to an end with the IFFCO, he has no submissions to be on this count.

4.4. Mr. Asim J. Pandya, the Ld. Addl. Central Govt. Standing Counsel has submitted that whether Central Government is the appropriate Government in the case of IFFCO is yet to be decided by the Department of Labour, Central Government and since the issue is pending before it, this Court may not enter into and decide that issue.

4.5. For the present I only discuss the aforesaid contention of the counsels on the issue of 'appropriate Government'. The other contentions raised by them will be mentioned and discussed little later in the course of the judgment.

4.6. With a view to appreciate this submission, the definition of "appropriate Government" given in the Act is required to be seen. It may be noted that in the year 1986 the definition of 'appropriate Government' as given in Section 2 (1)(a) was amended by Contract Labour (Regulation and Abolition) Amendment Act, 1986. This amendment was brought into effect from 28th January, 1986. Prior to the amendment, the definition stood as under :-

Section 2 (1) -

(a) "appropriate Government means -
(1) in relation to -
(i) any establishment pertaining to any industry carried on by or under the authority of the Central Government or pertaining to any such controlled industry as may be specified in this behalf by the Central Government or
(ii) any establishment of any railway, cantonment board, major port, mine and oilfield or
(iii) any establishment of a banking or insurance companies of the Central Government,

(2) in relation to any other establishment, the Government of State in which other establishment is situated."

After the amendment, definition of 'appropriate

Government' reads as under :-

"2(1) In this Act, unless the context otherwise requires.-
(a) 'appropriate Government' means -
(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government
(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated."

It will therefore, be necessary to refer to the definition of 'appropriate Government' given under clause (a) of section 2 of the Industrial Disputes Act (for short 'I.D. Act'). It is as under :-

"2(a) "appropriate Government" means-
(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such control industry as may be specified in this behalf by the Central Government or relation to an industrial dispute concerning a Dock Labour Board established under Sec. 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation Act, 1945 (15 of 1948), or the Employees' State Insurance Corporation established under Sec. 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Sec. 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (45 of 1948), or the Central Board of Trustees and the State Board of Trustees constituted under Sec. 5-A and Sec. 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952) , or the "Indian Airlines" and "Air India" Corporations established under sec. 3 of the Air Corporation Act, 1953 (27 of 1953), or the Life Insurance Corporation of India established under Sec. 3 of the Life Insurance Corporation of India established under Sec. 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Commission established under Sec. 3 of the Oil and Natural Gas Commission Act, 1959 (43 of 1959), or the

Deposit Insurance and Credit Guarantee Corporation established under Sec. 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Sec. 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Sec. 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Sec. 3 or a Board of Management established for two or more contiguous States under Sec. 16 of the Food Corporation Act, 1964 (37 of 1964), or the International Airports Authority of India constituted under Sec. 3 of the International Airports Authority of India Act, 1971 (43 of 1971), or a Regional Rural Bank established under Sec. 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government;"

Plain reading of unamended as well as amended definitions show that prior to amendment and subsequent to it the Central Government would be the 'appropriate Government' if the industry was either carried on by or under the authority of the Central Government or the industry was controlled industry as may be specified in that behalf by the Central Government. With the categories contained in clauses (ii) and (iii) of unamended definition, we are not concerned in this case. So far the amended definition is concerned, it has been divided into two parts. Clause (i) of section 2 (a) of the Act deals with industries in relation to which the appropriate Government is the Central Government, whereas clause (ii) is in relation to State Government. In the amended definition the entire definition of the 'appropriate Government' as given under the Industrial Disputes Act, 1947 is stated to be the definition of 'appropriate Government' in section 2 (1) of the Act.

Thus the industries covered under clause (i) can be categorised for the purpose of this definition as follows :-

(1) Industries carried on by the Government
(2) Industries carried on under the authority of the Government
(3) Railway company
(4) Controlled industries as may be specified by the Central Government in this behalf,
(5) Industries named in the definition.

Now it can be seen that so far the first part of the unamended and amended definition is concerned, it is more or less the same. In other words, in both the definitions the common factor is that in relation to the industry which is either carried on by or under the authority of the Central Government, it will be the Central Government that will be the 'appropriate Government'. With a view to ascertain whether the concerned industry is either the industry carried on by or under the authority of the Central Government, it will entirely depend upon the factual data.

4.7. As stated above, the first two categories of the industries in the definition of the 'appropriate Government' are 'an industry carried on by the Central Government' and 'the industry carried on under the authority of the Central Government'. This part of the definition of 'appropriate Government' came under close scrutiny of the Apex Court in two comparatively recent judgments rendered in the cases of (1) AIR INDIA STATUTORY CORPORATION (supra) and (2) STEEL AUTHORITY OF INDIA LTD. (supra). According to A.I.S.C. case the determining test whether the industry was carried on by the Central Government or under the authority of Central Government was whether the concerned industry was 'State" or 'Instrumentality of State' within the meaning of Article 12 of the Constitution of India. It has held as under :-

"25. It must be remembered that the Constitution adopted a mixed economy and control over the industry in its establishment, working and production of goods and services. After recent liberalised free economy private and multinational entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large scale industrial productions. Even some of the public corporations are thrown open to the private national and multinational investments. It is axiomatic, whether or not industry is controlled by Government or public

corporations by statutory form or administrative clutch or private agents, juristic persons, corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the Fundamental Rights enshrined in the Constitution. The word "control", therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives.

26. From the above discussion, the following principles would emerge :

(1) The constitution of the corporation or instrumentality or agency or corporation aggregate or corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.

(2) If it is a statutory corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.

(3) In commercial activities carried on by a corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19(2), it is an instrumentality or agency of the State.

(4) The State is a service corporation. It acts through its instrumentalities, agencies or persons - natural or judicial.

(5) The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles.

(6) The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law, principles and limitations.

(7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government.

(8) The existence of deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government,

(9) Functions of an instrumentality, agency or person are of public importance following public interest element.

(10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, Memorandum of Association or bye-laws or Articles of Association.

(11) The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, men and women, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workmen.

(12) Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

(13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions.

However, the same is no longer held to be good law in view of the decision rendered in the case of Steel Authority of India (SAIL) (supra) by the Apex Court. As per the judgment in SAIL's case words used in this

definition are required to be construed in their normal, ordinary meaning as commonly understood. The phrase "industry carried on by the Central Government" means that it is directly under the administration, management, supervision and control of the Central Government. There is no intervening agency for carrying on such industry. So far the second category of industry is concerned, it envisages grant of power or permission or delegation of power to carry on the industry to a Central Government company or other Government company or undertaking. Obviously in such cases Central Government does not retain the direct management or the administration of the concerned industry with it. In the case of the Steel Authority of India (supra) the Apex Court has observed as under :-

"28. Now, going back to the definition of the said expression, it combines three alternatives viz. (a) any industry carried on by the Central Government, (b) any industry carried on under the authority of the Central Government, and (c) any industry carried on by a railway company. Alternatives (a) and (c) indicate cases of any industry carried on directly by the Central Government or a railway company. They are too clear to admit of any polemic. In regard to alternative (b), surely, an industry being carried on under the authority of the Central Government cannot be equated with any industry carried on by the Central Government itself. This leaves us to construe the words "under the authority of the Central Government". The key word in them is "authority".

29. The relevant meaning of the word "authority" in the Concise Oxford Dictionary is delegated power. In Black's Law Dictionary the meanings of the word "authority" are :

"Permission. Right to exercise powers; ... Often synonymous with power. The power delegated by a principal to his agent. The lawful delegation of power by one person to another. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent."

In Corpus Juris Secundum (at p. 1290) the following are the meanings of the term "authority"; in its broad general sense, the word has been defined as meaning control over, power;

jurisdiction; power to act, whether original or delegated. The word is frequently used to express derivative power; and in this sense, the word may be used as meaning instructions, permission, power delegated by one person to another, the result of the manifestations by the former to the latter of the former's consent that the latter shall act for him, authority in this sense - in the laws of at least one State, it has been similarly used as designating or meaning an agency for the purpose of carrying out a State duty or function; someone to whom by law a power has been given. In Words and Phrases we find various shades of meaning of the word "authority" at pp. 603, 606, 612 and 613; authority, as the word is used throughout the restatement, is the power of one person to affect the legal relations of another by acts done in accordance with the other's manifestations of consent to him; an agency of one or more participating governmental units created by statute for specific purpose of having delegated to it certain functions which are governmental in character, the lawful delegation of power by one person to another; power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to him.

30. From the above discussion, it follows that the phrase "any industry carried on under the authority of the Central Government" implies an industry which is carried on by virtue of, pursuant to, conferment of, grant of or delegation of power or permission by the Central Government to a Central Government company or other government company/undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government to a government company or undertaking, it would disable such a company/undertaking to carry on the industry in question."

The Apex Court in this decision also took into consideration the aspect whether the company or industry being a 'State' within the meaning of Article 12 of the Constitution of India could be a determining factor for holding that in relation to that company the appropriate Government would be the Central Government. For that purpose after examining different decision rendered by the Apex Court, it came to the conclusion that the fact of being 'on instrumentality of Central/State Government'

or 'State' within the meaning of Article 12 of the Constitution of India cannot be a determining test of the question as to whether an industry carried on by a company/corporation or an instrumentality of the Government is by or under the authority of the Central Government for the purpose of or within the definition of 'appropriate Government' in the Act. In paras. 38 and 39 of the said judgment, it has observed as under :-

"38. From the above discussion, it follows that the fact of being an instrumentality of a Central/State Government or being "State" within the meaning of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a company/corporation or an instrumentality of the Government is by or under the authority of the Central Government for the purpose of or within the meaning of the definition of "appropriate Government" in the CLRA Act. Take the case of a State Government corporation/company/undertaking set up and owned by the State Government which is an instrumentality or agency of the State Government and is engaged in carrying on an industry, can it be assumed that the industry is carried on under the authority of the Central Government, and in relation to any industrial dispute concerning the industry, can it be said that the appropriate Government is the Central Government? We think the answer must be in the negative. In the above example, if, as a fact, any industry is carried on by the State Government undertaking under the authority of the Central Government, then in relation to any industrial dispute concerning that industry, the appropriate Government will be the Central Government. This is so not because it is an agency or instrumentality of the Central Government but because the industry is carried on by the State Government company/corporation/undertaking under the authority of the Central Government. In our view, the same reasoning applies to a Central Government undertaking as well. Further, the definition of "establishment" in the CLRA Act takes in its fold purely private undertakings which cannot be brought within the meaning of Article 12 of the Constitution. In such a case, how is "appropriate Government" determined for the purpose of the CLRA Act or the Industrial Disputes Act? In our view, the test which is

determinative is : Whether the industry carried on by the establishment in question is under the authority of the Central Government. Obviously, there cannot be one test for one part of the definition of "establishment" and another test for another part. Thus, it is clear that the criterion is whether an undertaking/instrumentality of the Government is carrying on an industry under the authority of the Central Government and not whether the undertaking is an instrumentality or agency of the Government for purposes of Article 12 of the Constitution, be it of the Central Government or the State Government.

39. There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to the Central Government though they may be "State" within the meaning of Article 12 of the Constitution. We have held above that being the instrumentality or agency of the Central Government would not by itself amount to having the authority of the Central Government to carry on that particular industry. Therefore, it will be incorrect to say that in relation to any establishment of a Central Government company/undertaking, the appropriate Government will be the Central Government. To hold that the Central Government is "the appropriate Government" in relation to an establishment, the court must be satisfied that the particular industry in question is carried on by or under the authority of the Central Government. If this aspect is kept in mind it would be clear that the Central Government will be the "appropriate Government" under the CLRA Act and the ID Act provided the industry in question is carried on by a Central Government company/an undertaking under the authority of the Central Government. Such an authority may be conferred, either by a statute or by virtue of the relationship of principal and agent or delegation of power. Where the authority, to carry on any industry for or on behalf of the Central Government, is conferred on the government company/any undertaking by the statute under which it is created, no further question arises. But, if it is not so, the question that arises is whether there is any conferment of authority on the government company/any undertaking by the Central

Government to carry on the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case."

In view of the aforesaid observations, the Apex Court said that whether there is conferment of power or authority to carry on the industry to the Government company or any undertaking by the Central Government is a question of fact which can be decided in the facts and circumstances of each case.

4.8. While ascertaining the facts to come to the conclusion whether the industry is carried on by the Central Government or whether conferment of power or authority by the Central Government is there, certain factors are required to be kept in view. This criterian has been adequately dealt with by the Apex Court in the case of Heavy Engineering Mazdoor Union v. State of Bihar reported in 1969 (1) S.C.C. at page 765 and it has concluded that the mere fact that the entire share capital was contributed by the Central Government and the fact that all its shares were held by the President of India and certain officers of the Central Government, would not make any difference. It was held that in the absence of a statutory provision, a commercial corporation acting on its own behalf, even though it was controlled, wholly or partially, by a government department would be ordinarily presumed not to be a servant or agent of the State. It was, however, clarified that an inference that the corporation was the agent of the Government might be drawn where it was performing in substance governmental and not commercial functions.

4.9. Similarly the Apex Court also in this judgment took into consideration earlier decisions of the said Court rendered in the cases of Rashtriya Mill Mazdoor Sangh v. Modern Mills reported in (1984) Suppl. S.C.C. 443, Food Corporation of India Workers' Union v. Food Corporation of India reported in (1985) 2 S.C.C. p. 294 and came to the conclusion that ratio laid down by three Judges Bench of the Apex Court in the case of Air India Statutory Corporation came to be decided in light of the aforesaid cases. In para. 46, while not agreeing with the view expressed by the three Judges Bench in Air India's case (supra) the Apex Court has observed as under :-

"46. We have held above that in the case of a Central Government company/undertaking, an

> instrumentality of the Government, carrying on an industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the CLRA Act, is that the industry must be carried on by or under the authority of the Central Government and nor that the company/undertaking is an instrumentality or an agency of the Central Government for purposes of Article 12 of the Constitution; such an authority may be conferred either by a statute or by virtue of the relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case. In view of this conclusion, with due respect, we are unable to agree with the view expressed by the learned Judges on interpretation of the expression "appropriate Government" in Air India case. Point (i) is answered accordingly."

5. Thus, sum and substance of the aforesaid discussion of the Apex Court as stated in para. 43 of its judgment on the question of 'appropriate Government' makes it clear that for application of the definition of the 'appropriate Government' in relation to the Central Government, the industry either has to be carried on by the Central Government or it has to be carried on under the authority of the Central Government and that too in acordance with the meaning explained by the Apex Court in SAIL's case of these two phrases. If it is missing and if the concerned industry is not Railway company or it does not fall within controlled industries as specified by the Central Government or in the list of the industries contained in the said definition, the Central Government would not be the 'appropriate Government' in relation to that industry. Then as a natural consequence thereof, it will be the State Government which will be the 'appropriate Government' for that industry. Answer to the question whether particular industry is carried on by or under the authority of the Central Government would entirely depend on the factual data.

5.1. Reverting back to the case of IFFCO, the question that is required to be determined is whether it is an industry carried on by the Central Government or carried on under the authority of the Government.

5.2. To appreciate whether it is an industry carried on by the Central Government certain details regarding IFFCO viz. its share capital, its membership,

its Board of Directors, etc. are required to be set out to have the factual data.

5.3. As per the details set out in page 4 of the additional Affidavit filed on behalf of the IFFCO dated 24th August, 2000; IFFCO was established in the year 1967 with a capital of more than Rs.200 crores which stand at Rs. 1,00,000 lacs as on 31st March 1991. The subscribed and paid up capital of the IFFCO as on 31st March, 1999 is Rs.38,291-44 lacs out of which Government of India holds equity capital of Rs.28,961-00 lacs with account for more than 75% for the total subscribed and paid up capital of the IFFCO. Besides, the Government of India is holding Rs. 289.61 crores equity capital, the National Cooperative Development Corporation holds Rs.1005.00 lacs and the cooperative societies including the National Cooperative Societies hold Rs.9419.61 lacs equity capital in the IFFCO. The details regarding its management, membership, Board of Directors, etc. will be discussed at appropriate stage.

Its membership is open to the following :-

(i) National Cooperative Federations of agricultural credit/marketing/processing/supply and other agricultural cooperative societies,
(ii) State level cooperative federations of agricultural credit/marketing/processing/supply and other agricultural cooperative societies,
(iii) District, Regional and Primary Cooperative credit/marketing/processing/supply and other agricultural cooperative societies including Cane Units.
(iv) Primary Agricultural Cooperative credit, service, multipurpose, cane irrigation, farming societies and other allied agricultural societies.
(v) National Cooperative Development Corporation
(vi) Government of India
(vii) Public Financial Institutions.

Its Board of Directors comprises -

(i) One nominee of each of the National Cooperative Marketing Federation in a State wherefrom all cooperative have paid not less than Rs. 1 Crore to the share capital of IFFCO. Such nominee shall be in accordance with the provisions of the Multi State Cooperative Societies Act/Rules.
(ii) 8 Directors to be elected by the general body
(iii) Not more than 5 persons to be nominated by Government of India

(iv) Managing Director of the National Cooperative development Corporation

(v) Managing Director, Finance Director and Marketing Director of IFFCO (all ex-officio)

(vi) the financing agency/agencies, if any, providing long term credit to IFFCO shall also be eligible to nominate one director each

(vii) Chairman/Chief Executive of National Cooperative, Union of India.

It may further be seen that the authorized share capital of IFFCO is prescribed as Rs.1,000 crores which have been made up of the following 3 categories, namely -

(1) 90,000 shares of the face value of Rs.1,00,000/each to be allotted generally to the Government of India, the National Cooperative Development Corporation, Public Financial Institutions, National/State/Regional Federations and large processing cooperative such as Cooperative Sugar Mills, Cooperative Cane Unions, District and Central Cooperative Banks and Central/other cooperative societies as are willing to subscribe to the shares voluntarily.

(2) 50,000 shares of the face value of Rs.10,000/each to be allotted generally to the District and Primary Marketing/Processing/Supply and other Cooperative Societies including Cane Unions.

(3) 5,00,000 shares of the face value of Rs.1,000/- each to be allotted generally to primary societies at the village level.

Bye Law No. 6 empowers IFFCO to retire the share held by the Government of India, National Cooperative Development Corporation and Public Financial Institutions There is nothing whatsoever on record to show that IFFCO's management or administration is either directly under the control of the Central Government or any of its department. Therefore, the factual data given in foregoing paragraphs undoubtedly establishes that IFFCO is a commercial corporation completely carried on by machinery set up in the Bye Laws and despite 75% of the share-holding of the Government of India, it has very limited say in the working of the IFFCO. In other words except for seeking approval in certain matters, IFFCO is not at all required to approach the Government of India for carrying on its business activity. It is acting on its own behalf.

Moreover if we turn to the objects for which

IFFCO has been formed and which have been narrated above, it is very clear that it is meant for manufacture of fertilizers, etc. to be made available to the farmers. It is purely a commercial activity. So far the area of operation is concerned, it extends to the whole of Indian region. It has units in different States. In Gujarat it has its units, one at Kalol in Mehsana District and the other at Kandla in Kachchha District. So far the membership of IFFCO is concerned, it is open to National Cooperative Federations of Agriculture, State level Cooperative Federations of Agriculture, District, Regional and Primary Cooperative and other Agricultural Cooperative Societies including Cane Union. Thus, its membership at the State level is open even to the District, Regional and Primary Agricultural Societies. Composition of Board of Directors also shows that it shall have one nominee of each of the Apex Cooperative Marketing Federation in a State where from all cooperatives have paid not less than Rs.1 crore in the share capital of IFFCO and also 8 Directors to be nominated by the general board. So far the Central Government is concerned, it is permitted to nominate not more than 5 persons as Directors. The direct representation of the Central Government on Board of Directors is comparatively very less. Thus, various types of agricultural cooperatives at State level have substantial participation in the affairs of IFFCO. From the constitution of the IFFCO it clearly emerges that it is not an industry carried on by the Central Government. The ultimate management and administration of the affairs of the company is carried on by the Board of Directors subject to scrutiny of the General Body. Its day to day business is being handled by the managerial and supervisory staff under the gaze of Exe. Committee which is responsible for efficient management of the project or establishment. It has wide powers to enter into contracts, make purchases, place orders, etc. upto the value of Rs.5 crores. All this is again subject to the approval of the Board of Directors.

The aforesaid factors clearly show that IFFCO is not an industry carried on by the Central Government. IFFCO therefore, does not fall in the first category of the industries and it is not a industry carried on by the Central Government.

6. The next question is whether IFFCO is an industry carried on under the authority of Central Government. So far the words "under the authority of Central Government" are concerned, the Apex Court has observed that the key word therein is "authority" and

after discussing the word "authority" it has said that the phrase "any industry carried on under the authority of Central Government" implies an industry which is carried on by virtue of, pursuant to, conferment of, grant of or delegation of permission by the Central Government to a Central Government company or other Government company/undertaking. It has also said that if there is a lack of any conferment of power or permission by the Central Government to Government company or undertaking, it would disable such company/undertaking to carry on any industry in question. If the IFFCO is viewed in light of the observations made by the Apex Court, it is very certain, that it is not an industry carried on "under the authority of the Central Government" as there is nothing on record to show that the IFFCO is carried on by virtue of or pursuant to, conferment of, grant of or delegation of power or permission by the Central Government to it. So far IFFCO's Bye Laws are concerned, there is no provision in it which may indicate delegation or conferment of or grant of power to IFFCO by the Government of India to carry on the said industry; nor there is any deed, agreement, contract or written instrument of power in favour of IFFCO by the Central Government for carrying on the industry. Not only that but even various affidavits filed by IFFCO and respondents nos. 3 and 4 do not state about delegation of such power or authority to IFFCO. IFFCO is, therefore, not covered under the second category of industries also.

Record of the petition shows that undisputedly it is not a railway company nor its name appears in the industries covered under controlled industries as specified by the Central Government in that behalf nor in the list of industries named in the definition.

7. In light of aforesaid discussion of the present facts, it becomes clear that the IFFCO is neither an industry carried on by the Central Government nor it is an industry carried on under the authority of the Central Government nor it is named in the list of control industry as specified in this behalf by the Central Government nor it is any one of the industries mentioned in the definition of 'appropriate Government'. It, therefore, safely be said that with regard to IFFCO it is the State Government, which is 'appropriate Government'. So far IFFCO is concerned, its counsel Mr. Nanavati has not advanced any submission based on facts to persuade me to hold that the Central Government is the 'appropriate Government' in respect of IFFCO.

7.1. Incidentally it may be mentioned here that in the SAIL's case, the A.S.G. appearing for the IFFCO, which also was before the Apex Court as a party in one of the petitions, conceded the position that for IFFCO 'appropriate Government' is the State Government.

8. The question that is now to be considered is what is the effect of the aforesaid finding. The logical consequences of this finding are that the notifications and the licences granted by the Central Government referred to above in respect of IFFCO cannot be held to be validly issued as in respect of IFFCO the Central Government cannot exercise any power under the Act. If that be so, the notifications issued by the State Government prohibiting contract labour in the operations of stacking and loading and unloading of urea bags come into force and the IFFCO cannot be permitted to continue contract labour in those operations.

9. The next question that would arise for determination is whether by virtue of abolition of the contract labour practice whether the employees of the contractor working in the industry on the date of abolition would automatically stand absorbed in the said industry and there will be direct relationship of employer and employee between the principal employer and the contract labour, since some reliefs in this petition are based on this issue and it has been argued to a considerable extent.

9.1. In the case of Steel Authority of India (supra) this was also one of the questions that had arisen for consideration of the Apex Court. After referring to the contentions advanced by the counsels for the parties, the Apex Court divided this issue into two, namely (a) whether the concept of automatic absorption of contract labour in the establishment of principal employer on issuance of the abolition notification is implied in section 10 of the Act, (b) whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour emerges. After referring to the definitions of the terms 'contract labour', the contractor', 'the principal employer' and 'the workman' under the Act and also after taking into consideration the reports submitted by Law & Commission (also known as 'Whitley Commission'), railway committee, Second Planning Commission and the National Commission on labour he Apex Court came to the conclusion that in none

of these provisions regarding automatic absorption upon issuance of notification with regard to abolition of the contract labour is either mentioned or recommended. The Apex Court also in this decision in para. 87 considered this issue vis-a-vis the relevant provisions of the Act and the implications thereof. It has thereafter observed in paras. 88 and 89 as under :-

"88. If we may say so, the eloquence of the CLRA Act in not spelling out the consequence of abolition of contract labour system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasons of the Act, appears to be that Parliament intended to create a bar on engaging contract labour in the establishment covered by the prohibition notification, by a principal employer so as to leave no option with him except to employ the workers as regular employees directly. Section 10 is intended to work as a permanent solution to the problem rather than to provide a onetime measure by departmentalizing the existing contract labour who may, by a fortuitous circumstance be in a given establishment for a very short time as on the date of the prohibition notification. It could as well be that a contractor and his contract labour who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be no justification to prefer the contract labour engaged on the relevant date over the contract labour employed for a longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labour in the CLRA Act.

89. In the light of the above discussion, we are unable to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the establishment concerned on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of contract labour in a given establishment."

The Apex Court also examined this issue in light of the earlier decisions rendered by the Apex Court in this behalf. It may be stated here that so far the three

Judges Bench of the Apex Court in Air India Statutory Corporation's case (supra) is concerned, it had taken the view that upon issuance of notification with regard to abolition of contract labour in particular industry, the contract labour working in that industry automatically become the employees of the principal employer as the middleman, namely the contractor vanishes upon the abolition of the contract labour by virtue of cessation of his relations with the principal employer as contractor/agent. This view has, however, not been subscribed to by the Apex Court in the later decision of Steel Authority of India Ltd.

9.2. So far the second limb of this issue, namely whether on a contractor engaging contract labour with the work entrusted to him by a principal employer is concerned, the relationship of master and servant between the principal employer and the contract labour emerges. It has been answered by the Apex Court in negative while rejecting the contention raised by the counsel in support thereof, by observing as under :-

> "117. We find no substance in the next submission of Mr. Shanti Bhushan that a combined reading of the definition of the terms "contract labour", "establishment" and "workman" would show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship."

10. In light of the view taken by the Apex Court, Mr. Sinha's submission regarding automatic absorption cannot be accepted. Even Mr. Sinha has later in the course of hearing virtually agreed to the position that the contract labour working on the date of abolition would not automatically stand absorbed in the concerned industry. According to him, when the petition was filed ratio laid down in AISC's case was not over ruled and this averment was based on the position of law prevailing then. However, his next contention is slightly different which is to the effect that in the present case even after the extinction of the Act in relation to the said operation, the contract labour is allowed to continue in aforesaid operations by the principal employer and that would bring about a direct relationship of the employer and employee between them and they would be the regular employees of the IFFCO. Of-course he has advanced this submission on the basis of his first submission that vis-a-vis IFFCO State Government is the appropriate Government and when it has abolished engagement of

contract labour, application of the Act ceases in the operations of stacking, loading and unloading the urea bags, the Central Government cannot grant any licence permitting employment of contract labour in those operations as it has no authority to do so. According to him, even after abolition of contract labour vide notification dated 3rd June, 1998, services of contract labour is being availed even today. He has further submitted that IFFCO arranged to get registration from the Central Government with a view to frustrate the notification dated 3rd June, 1998 and judgments rendered by this Court, but registration granted and licences issued by the Central Government cannot be held to be valid and notification of abolition of the Act has remained effective from the date of its issuance.

10.1. As against that, Mr. K.S. Nanavati, the learned counsel for the IFFCO has submitted that the contract labour is continued only in the view of the fact that the Central Government being the 'appropriate Government' has issued the necessary licences granting permission to employ contract labour in the operations of stacking and loading and unloading of the urea bags. The aforesaid controversy will have to be viewed in the backdrop of the relevant facts as well as the relevant case law in this behalf. He has submitted that IFFCO approached the Central Government only because it was directed to do so by the concerned authority and that direction was given in view of guidelines issued by Ministry of Labour, Government of India and the Chief Labour Commissioner in accordance with the principles laid down in AISC's case. Therefore, no ulterior motive can be attributed to IFFCO.

10.2. It may be stated here that the question regarding the validity of notification issued under Section 10 (1) of the Act by the State Government dated 3/6/1998 is directly under challenge in the aforesaid Leters Patent Appeals pending before the Division bench of this Court. I am informed that before the learned Single Judges this challenge was mainly based on the ground that considering the nature of work involved in stacking, loading and unloading operations in IFFCO, engaging contract labour is the only viable solution. However, before the Division Bench IFFCO has also challenged the notification on the ground that for IFFCO Central Government is the appropriate Government and State Government has no authority to impose ban by issuing notification under Section 10 of the Act. This ground is based on ratio laid down in AISC's case. So whatever discussion that is done hereafter is strictly

confined to the issues involved in this petition only without trenching upon the jurisdiction of the Division Bench and only for the purpose of deciding the questions whether allegations made against IFFCO are tue and if yes, what is the ultimate effect thereof.

11. To appreciate these submissions, it will be necessary to refer to certain factual data from the record of the petition and also the submissions made by the counsels. It may be recalled here that the petitioner had made a complaint for abolition of contract labour in the aforesaid operations way back in the year 1984, and the complaint was numbered as Reference No. 3/1984 before the State Advisory Board constituted under the provisions of section 10 of the Act. For considerable long period no step or action was taken by the State Government in respect of the said complaint. The said workers became members of the petitioner union some time in the year 1995 and the union again took up that issue and served a notice dated 14th August, 1995 wherein it was pointed out that inspite of the fact that hearing was concluded in Reference No. 3/1984 in 1986, nothing further was done by the State Government even when report was sent to it. Soon thereafter the State Government issued first notification dated 27th December, 1995 abolishing engagement of contract labour in various operations of IFFCO including the stacking of urea bags on the platform. This notification, however, kept out the operations of loading and unloading of urea bags in the railway wagons and the trucks. In a petition filed in this Court, the State Government was directed to consider the entire issue of Reference No. 3/1984 afresh. Even thereafter the second notification which came to be issued on 18th October, 1996 did not take in its sweep the operations of loading and unloading of urea bags in the railway wagons and the trucks. Yet another round of litigation before this Court took place and the State Government was again called upon to give its adequate consideration to the issue of including operations of loading and unloading in the notification for abolition of the contract labour. Ultimately third notification dated 3rd June, 1998 amending the notification dated 18th October, 1996 was issued wherein the operation of loading and unloading was also included. IFFCO preferred Special Civil Application No. 4950 of 1998 before this Court challenging the amended notification, but the same was dismissed by the learned Single Judge on 11th September, 1998, against which Letters Patent Appeal No. 1285/1998 is pending. However, no interim relief staying the operations was granted by this Court in appeal. The history of the rest

of the litigation between the parties in this Court in respect to the aforesaid issue has already been stated earlier and there is no need to repeat the same here.

12. It may be noted here that a change with regard to the appropriate Government was brought about in view of the judgment of the Apex Court rendered in the case of Air India Statutory Corporation.

Reference to the affidavit-in-reply filed by Mr. P.K. Vasistha, Assistant Labour Commissioner (C) Ahmedabad on behalf of respondent no. 4 shows that the concerned Ministry i.e. Ministry of Labour of the Union of India interpreted and analysed the ratio laid down by the Apex Court and evolved certain principles which have been enumerated in the said affidavit to determine or to lay down a test for deciding whether in respect of a particular industry Central Government is the appropriate Government. Thus having considered said the decision of the Apex Court, the said Ministry and office of the Chief Labour Commissioner (Central), New Delhi framed certain guidelines and circulated them vide its letter dated 8/9/1997. According to the said guidelines it was decided that the Central Government would be the appropriate Government in respect of Central public sector corporations, companies or other establishments established under the Societies Registration Act which are controlled by Central Government under the I.D. Act, the Contract Labour Act, the Payment of Bonus Act, the Minimum Wages Act, the Equal Remuneration Act and Inter-State Migrant Workmen (Re and Ch) Act. The office of the Chief Labour Commissioner, New Delhi also directed that the decision of the Apex Court in Air India Statutory Corporation's case should be given effect to in its letter and spirit. Similar letter was also issued by the Ministry of Labour, Government of India to the Chief Secretaries of all the States and Union Territories. In light of the aforesaid instructions issued by the Ministry of Labour and the office of the Chief Labour Commissioner as well as the Ministry of Law, Central Government, the public sector corporations, companies established under the Societies Registration Act were instructed to get themselves registered with the Central Government. Accordingly, IFFCO was also required to get itself registered with the Central Government. IFFCO Kalol in relation to the provisions of the Act applied for registration in Form No. 1 vide its letter dated 5th March, 1998, which was received in the office of the Assistant Labour Commissioner, Ahmedabad, it being the Registering Authority under the Act, on 10th March, 1998. Pursuant to the said application certificate of

registration was issued on 12th March, 1998.

12.1. Since the Central Government was declared as appropriate Government with regard to IFFCO and since there was no prohibitory notification issued by the Central Government with regard to the operations of stacking and loading and unloading of urea bags in IFFCO the labour contractors, namely M/s. B.D. Dhakkan & Co. applied for licences vide its application in Form No. 4 dated 31st March, 1998 and the licence was issued by the Central Government on 16th April, 1998. So far M/s. Rao Saheb Khasaba is concerned, the application did not bear any date. However, the licence came to be issued by the concerned authority with effect from 16th April, 1998 and 28th July, 1998. Thus, the contract labour was allowed to be employed in the aforesaid operations by virtue of the registration and licences granted by the Assistant Commissioner of Labour, Central Government at Ahmedabad. In view thereof it cannot be said that IFFCO with a view to nullify the prohibition imposed by the State Government vide notification dated 3rd June, 1998 managed to get it registered under the Central Government and thereafter received the benefit of contract labour. May be that the guidelines framed by the Central Government on the basis of the judgment rendered in the case of AISC by the Apex Court are ultimately found to be erroneous, especially in light of the judgment delivered by the Apex Court in the case of Steel Authority of India Ltd. But so far IFFCO is concerned, employment of contract labour in aforesaid operations cannot be said to be with deliberate intention to render the notification of the State Government ineffective.

12.2 Considering the circular issued by the Central Government and the guidelines prescribed by it and direction to IFFCO by the State Government to approach the Central Government and obtain registration under the Act and IFFCO after complying with the said direction desired to employ contract labour of the duly licensed contractor in the operations of stacking and loading and unloading, it is difficult to hold that there was wilful neglect by IFFCO of the prohibition imposed by the State Government. In view of the Ministry of Labour taking a decision with regard to the Central Government companies, corporations, establishments registered under the Societies Act, etc. to be the industries for which appropriate Government would be the Central Government, the State ceased to be the 'appropriate Government' vis-a-vis IFFCO and whatever notifications that were issued by it automatically ceased to have any effect.

13. Now the question is whether IFFCO can then be saddled with the liability to absorb the contract labour upon this Court finding that the decision of the Central Government is erroneous and for IFFCO the appropriate Government is the State Government in light of the decision rendered by the Apex Court in Steel Authority of India's case. The answer would be in negative. It is true that if the Central Government ceases to be the 'appropriate Government' vis-a-vis IFFCO in relation to the provisions of the Act, it will be the State Government which will be the 'appropriate Government' and the notification issued by it prohibiting contract labour in stacking and loading and unloading operations would stand revived, but that will not make IFFCO liable to absorb the contract labour automatically. Though in this case the exact situation of abolition of the contract labour is not brought about with the finding that the Central Government is not the appropriate Government, a situation very akin to that is emerging. In view of the declaration of the Central Government with regard to application of the provisions of the Act to the companies, enterprises, establishments, etc. the contract entered into by and between IFFCO and the aforesaid contractors was valid and now it may come to an end by virtue of the fact that according to this Court the Central Government is not the 'appropriate Government' for IFFCO under the Act. The net effect of that would be that the abolition would come into force again, but for the intervening period i.e. the period between issuance of notification and the date of this decision IFFCO cannot be said to be engaging contract labour despite the prohibition imposed on it. In light of this situation, the principles that have been enunciated by the Apex Court with regard to effect of the abolition of the Act qua automatic absorption will come into play. It is a well settled law by now that in such event automatic absorption cannot be there. Similarly in the present case, considering the facts on record, in my opinion, the automatic absorption of the contract labour in the employment of the principal employer i.e. IFFCO cannot be directed. If the industry continues contract labour in particular operations with full knowledge that for that operation contract labour is prohibited, there will not be any difficulty in presuming that it intend to have them on regular basis and direct relationship of employer and employee has come into existence between the principal employer and the contract labour. Such workers will be the workers of the establishment like any other worker of that establishment. However, when such knowledge or intention on the part of IFFCO to have contract labour in aforesaid operations, despite the

abolition of the Act, cannot be attributed in view of the licences issued by the Central Government; it cannot be directed to absorb the contract labour employed in the aforesaid operations.

13.1. When a certain change is brought about by virtue of the new legislation or a principle of law enunciated by the Apex Court, normally the rights and liabilities that have arisen in accordance with the old law or the principles of law laid down by the Apex Court in some earlier decisions cannot be disturbed so easily, so as to adversely affect the party, which in accordance with the position then existing, entered into some contract with the other. This has been aptly explained in the case of Douglas v/s. Pike Country, 25 L.Ed. 968, 671 by Waite, C.J. "The true rule is to give a change of judicial construction, in respect of a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment, that is to say, make it prospective." While discussing the doctrine of stare decisis it has been further observed by the courts that "Our decisions will not embarrass trade or commerce, nor will it affect transactions which may have been adjusted, rights which may have been determined, titles may have been obtained or personal status which may have been acquired." As stated above, by virtue of Central Government's interpretation of the decision of the Apex Court rendered in Air India Statutory Corporation's case the certain guidelines have been framed by the Chief Commissioner of Labour, Central Government and if IFFCO decided to enter into contract with regard to employing the contractors' labourers in certain operations, in accordance with those guidelines, it was perfectly justified to do it and it cannot be saddled with the liability to absorb these workmen automatically.

14. Mr. Sinha has contended that the circular issued by the Ministry of Labour dated 16th October, 1997 names the industries for which Central Government is the appropriate Government and in that list IFFCO is not there. Further that it has never been a 'Central Public Sector undertaking' and, therefore, it will not be covered under the circular issued by the Ministry and the Chief Labour Commissioner. He has further contended that Labour Commissioner, Gujarat has no authority to declare appropriate Government in relation to IFFCO. Thus, according to Mr. Sinha, all licences issued and registration by Central Government are not valid and they have no effect in law. He has also submitted that considering the fact that even

according to IFFCO it is not covered under Article 12 and if that be so, as per ratio laid down in AISC case for IFFCO Central Government would not be the appropriate Government.

14.1. If the aforesaid circulars are perused, there is no doubt that they have been issued in view of the decision rendered by the Apex Court in Air India Statutory Corporation's case and the guidelines prescribed therein are framed on the footing that the Apex Court had done away with the difference between the phrases 'carried on by' and 'under the authority of the Central Government.' Considering criteria laid down in these circulars IFFCO can be brought within the range of industries meant to be covered under that criteria. It is true that in the list of industries mentioned in the circular dated 16th October, 1997 name of IFFCO is not there but then this list contains the industries which have been named in the definition as prescribed u/S. 2(a) of the Act and it does not cover the industries falling under first or second category. Naturally IFFCO's name would not appear in that list. The question, which is required to be considered is whether Central as well as State Labour Authorities were justified in construing that IFFCO stands covered by the guidelines or norms prescribed by the Central Ministry for Labour and to decide that Central Government is the appropriate Government vis-a-vis it. The circulars state and include Central Public Sector Undertaking incorporated under Societies Registration Act. Now Central Public Sector Undertaking means 'that part of the industry which is controlled fully or partly by a public undertaking'. It is also incorporated under Multi-State Cooperative Societies Registration Act. Therefore, the concerned authorities were of the opinion that in relation to IFFCO Central Government is the appropriate Government. The circular issued by the Deputy Labour Commissioner (Central) clearly shows that these criteria have been laid down after consulting the Law Ministry of the Central Government.

14.2. Of course, when IFFCO itself says that it is neither State agency nor instrumentality of the State, whether it was proper to treat it as an industry for which Central Government is the appropriate Government. IFFCO, as already stated earlier, is an industry neither carried on by the Central Government nor under the authority of the Central Government. Its affairs are being managed by the Board of Directors and the managerial staff employed by it. The affidavits filed in these proceedings are by the Chief Manager (Personnel and

Administration). These affidavits nowhere state that they have been filed in consultation with the concerned Ministry. Thus, the aforesaid stand taken by it is strictly that of IFFCO. As against that, affidavit-in-reply filed on behalf of respondent no. 4 by Mr. P.K. Vasistha, Assistant Labour Commissioner (C), Ahmedabad shows that in view of ratio laid down by the Apex Court several principles have been spelt out and based on that certain guidelines have been prescribed by the Ministry of Labour and office of the Chief Labour Commissioner (Central), New Delhi. So far implementation of Labour Legislations is concerned, IFFCO has no say in it and it is the Labour Ministry or the appropriate authorities designated under such legislation which will have the jurisdiction to maintain surveillance over the industries covered under such legislations to ensure that such industries carry on the business in accordance with law. It is they which alone can issue appropriate directions to such industries to meet the requirements prescribed under the relevant law. All the Chief Secretaries and authorities under labour legislation of the States are directed by the Ministry of Labour Central Government and Chief Commissioner of Labour (C) to advise the industries answering to the description or nature of industries specified in these circulars to get themselves registered with Central Government. In the opinion of the Labour Commissioner, State of Gujarat IFFCO was such industry and hence State Government directed it to get itself registered with the Central Government. He was therefore fully justified in doing so.

14.3. In these circumstances and particularly in view of the fact that the registration and licences had been granted by Central Government, IFFCO, irrespective of its stand taken in this petition, could engage contract labour in aforesaid operations. If this issue is examined from slightly different angle i.e. if judgment in SAIL's case was not there, then what would have been the position. The answer is that law laid down in AISC's case would have been still holding the ground and according to Central Government it would have been the appropriate Government for IFFCO and IFFCO would be in position to engage contract labour till licences continued.

15. Mr. Sinha has referred to the decision of the Apex Court rendered in the case of Dinanath v/s. National Fertilizers Ltd. reported in (1992) 1 S.C.C. page 695. He has assailed the submission of Mr. Nanavati based on this decision, which is to the effect that even if this Court finds that the Central Government

has no authority to issue licence, at the most the IFFCO would be put to the penal consequences prescribed in the Act for engaging contract labour without valid licence. Mr. Sinha has submitted that the case of IFFCO is on different footing altogether because in Dinanath's case the decision has been rendered on the basis that there was failure of compliance of section 7 and/or section 12 of the Act and, therefore, it can safely be inferred that the Act was applicable but provisions of sections 7 and 12 were violated in that case. His case is that since vide notification dated 3rd June, 1998 application of the Act has been abolished by the State Government, the Act ceases to exist in so far as the operations of stacking and loading and unloading of urea bags in IFFCO are concerned and when the Act does not exist, there is no question of compliance or noncompliance of the relevant provisions. According to him, therefore, the ratio laid down in the case of Dinanath has no application to the present case.

15.1. It is true that the decision in Dinanath's case is based on noncompliance of the relevant sections and, therefore, the registration as well as licences issued for contract labour are found to be invalid. So far the present case is concerned, these are not the facts existing here. In my opinion, however, the ratio laid down in the case of Dinanath would not come into play, of-course not for the reasons advanced by Mr. Sinha but for different reasons. The discussion in the foregoing paragraphs clearly shows that by virtue of the Central Government's circulars which was prior to issuance of the aforesaid notification of the State Government, applicability of the Act was already there, IFFCO has got itself registered with the Central Government and since there was no notification issued by the Central Government with regard to abolition of the Act in stacking and loading and unloading operations of IFFCO, the application of the Act continued. The licences issued by the Central Government to the contractors were found to be in order as there is no challenge to these licences on the ground of want of proper compliance or total noncompliance of the relevant provisions of the Act. In my opinion, therefore, Dinanath's case has no bearing on the facts of the present case.

16. Here I may also deal with Mr. Sinha's submission that though even when instructions issued by the Chief Labour Commissioner (Central) were suspended upto 27th July, 1998. During that period contracts continued to operate in the aforesaid activities and even

licence came to be issued to M/s. Rao Saheb Khasaba during this period and, therefore, the effect of it is that IFFCO continued contract labour even when the Act stood abolished in the aforesaid operations.

16.1. In March 1998 circulars to the different authorities in the State as well as Union Territories came to be issued with regard to the guidelines given by the Ministry of Labour and the Chief Commissioner of Labour in respect of the appropriate Government. It is also found from the record that for a period of about two months these guidelines or instructions remained in suspension. This would certainly give an indication that the said instructions were not totally scrapped but their effect was withheld for certain period. They were reintroduced on 20th July, 1998. If the licences are perused, they were issued at the time when the instructions were in force and the contract labour was engaged pursuant to these licences. Whether IFFCO was duly intimated by the concerned authorities that instructions contained in letter were kept in abeyance and hence it should not continue engaging contract labour for stacking and loading and unloading operations and despite such intimation IFFCO continued to have contract labour in aforesaid operations, no clear picture is emerging from the record in this behalf. These are the questions which are required to be answered. These are all questions of fact. As stated earlier, no clear picture can be had in this behalf from the record. For want of material and also while exercising my writ jurisdiction under Article 226 of the Constitution of India it is very difficult for me to decide all these questions.

17. The petitioner has contended that the workmen named in the list at Annexure-A have been working in the bagging department of IFFCO for the last 20 years and they have been discharging duty round the clock in three shifts. These workers have remained in IFFCO despite the fact that many contractors during this period, have come and gone but the workers have remained the same. Mr. Sinha has therefore contended that though these workers are shown to be contract labour, in reality they are the employees of IFFCO and the contract entered into between the contractors and IFFCO is sham and bogus. He has further contended that if the veil is pierced through, the picture that emerges is that the workers are of IFFCO but with a view to avoid to have them on regular basis, the fake contracts are being created. He has, therefore, submitted that this Court should direct IFFCO to absorb these workers on regular basis. As against

that, IFFCO has denied this contention of the petitioner and has submitted that at no point of time these workers have been in the employment of IFFCO. It has, however, stated that some of them may have been employed through contractor, but there is no direct relationship of employer and employee and there is no privity of contract between the IFFCO and the said workers. The contractor has not controverted petitioner's averment.

17.1. Considering the nature of dispute, it is very clear that the same can be resolved after proper adjudication, on the basis of the relevant factual data that may be brought before the industrial adjudicator in the form of oral evidence as well as documentary evidence by the parties. Sitting under Article 226 of the Constitution of India, while exercising my writ jurisdiction, it is very difficult to resolve this controversy here. The petitioner may therefore approach the industrial forum created under the I.D. Act by filing appropriate proceedings before it and get this dispute adjudicated upon.

17.2. The question that arises now is whether workers named in the list can be granted any relief at this stage. The record of the petition shows that though the IFFCO has denied the aforesaid contention of the petitioner, it has candidly admitted that some of them may have been working through the contractor. If the contractor's affidavit is perused, it does not deal with this aspect at all. It, therefore, prima-facie appears that there is some substance in the petitioner's say. In view of this position, it is in fitness of things that till the question of their permanency is decided, their services are required to be protected. Further the record of the petition also shows that the Division Bench of this Court in Letters Patent Appeal No. 118 of 2000 in Special Civil Application No. 5192 of 1999 with Civil Application No. 2729 of 2000, vide order dated 19th April, 2000 has directed the IFFCO to pay to these workers 25% of minimum of the gross pay packet given to the equivalent category of employees of IFFCO with effect from 15th May, 2000. It also appears that by virtue of the stay order dated 10th May, 2000 granted against the same by the Apex Court, the operation of the aforesaid order was stayed. The petitioner has made a grievance that the said stay order of the Apex Court was in view of the pendency of IFFCO's matter, which was tagged alongwith the Steel Authority of India's case. However, the same has now been disposed of and the stay order does not exist. In view thereof, the IFFCO be directed to make payment in accordance with the order of the Division

Bench of this Court. As against that, Mr. Nanavati has submitted that when this issue regarding permanency is pending before the Division Bench in the Letters Patent Appeal, such relief cannot be granted in this petition.

17.3. It is true that whether abolition of contract labour is necessary or not and whether the operations of stacking and loading and unloading are of permanent and perennial nature, are the questions pending before the Division Bench in the aforesaid Letters Patent Appeal. However, considering the fact that the Division Bench of this Court even by way of interim relief has granted this benefit and when I find that in the aforesaid circumstances the services of these workers are required to be protected till the question of their permanent status is decided, it is in the fitness of things that IFFCO be directed to pay in accordance with the aforesaid direction of the Division Bench to these workers. IFFCO is, therefore, required to be directed that it should clear up all these arrears on this count and also commence making payment in terms of the order of the Division Bench to these workers till the question of their permanent status is decided.

Further when the notification imposing prohibition on the employment of contract labour is issued under Section 10(1) of the Act, such dispute should only be resolved by adjudicator as suggested in the decision of Steel Authority of India's case by the Apex Court. In case it is found that the aforesaid workers or any of them have been or has been working for a considerable time in IFFCO, IFFCO should give them first preference in the event it desires to have regular employment in the operations of stacking and loading and unloading. It is also recommended that considering the case of such employees the relaxations with regard to age, etc. should be made and unless it is found that such worker is not physically or medically fit for such operations, he should be given the priority. It is also recommended that considering the nature of work, it is desirable for IFFCO to have experienced hand and even for that matter, it should opt for such worker.

18. So far Mr. Nanavati's contention with regard to alternative remedy is concerned, I am not inclined to accept it and dismiss this petition on that ground. It is a well settled law by now that even if the alternative remedy is available, this Court under Article 226 of the Constitution of India can certainly exercise its writ jurisdiction if it is found that the other remedy may not prove to be equally efficacious.

Considering the nature of the reliefs claimed in this petition and the importance of the issue involved, this Court will be appropriate Court to decide the same. The second limb of Mr. Nanavati's submission is that even if this Court finds that there are certain breaches committed by IFFCO, there is no need to issue directions as prayed for by the petitioner as that can be referred to the adjudicator or the concerned authorities to take appropriate decision in that regard. He has also relied on the following authorities for this purpose :-

i. Baburam v. Zila Parishad reported in AIR 1969 S.C. 556,
ii. Jai Singh v. Union of India reported in AIR 1977 S.C. 898,
iii. Todi Industries Ltd. v. Union of India reported in (1999) 9 S.C.C. p. 230

Considering the ratio laid down in the aforesaid cases, I am in total agreement with Mr. Nanavati and I see no reason to grant reliefs to the petitioner which require the fact finding exercise.

In case the petitioner desires to approach the industrial adjudicator in connection with the aforesaid dispute, the same should be done at the earliest, preferably within a fortnight from the date of pronouncement of this judgment. To enable the petitioner to avail that remedy and to obtain appropriate order from the adjudicator, the parties are directed to observe the status-quo as on today for a period of three weeks from the date of this judgment.

19. So far relief (A) in para. 6 of the petition is concerned, it stands granted because, as discussed earlier in this judgment, it is the State Government which is the appropriate Government with regard to IFFCO and the Central Government had no authority under the Act to grant registration to the IFFCO and to issue licences to the contractors for engaging the contract labour.

19.1. So far clause (B) is concerned, it can be stated that there does not seem to be any deliberate breach of any prohibitory provision either by the IFFCO or the contractors or the concerned officer. Further if any breach is committed, it will be for the appropriate officer under the Act to take appropriate decision with regard to the petitioner employing contract labour in the operations stacking and loading and unloading.

19.2. So far relief (C) is concerned, since I

have come to the conclusion that the contract labour cannot automatically get absorbed by the IFFCO and to grant them all the benefits that are available to a regular employee of the IFFCO, cannot be granted. However, it is strongly recommended that employees shown in Annexure-I, if any, are available, be given priority in case IFFCO needs to have labour on regular basis.

19.3. The reliefs with regard to prosecuting official incharge of respondent no. 2 as claimed in clause (D) of the prayer clause is concerned, it is not for me to decide the same here. It is for the appropriate officer if it finds that there are reasons for prosecuting such officer, he may proceed to do so. Such officer, whether can be prosecuted in the present case is matter of investigation which cannot be dealt with in this petition under Article 226 of the Constitution of India. However, with regard to the relief claimed in Clause (D) it can be said that looking to the controversy involved and the conflicting versions based on facts advanced by the petitioner as well as the respondents, it appears that the dispute can be best resolved by the adjudicator who can give full opportunity to all concerned to lead oral as well as documentary evidence before it and after due scrutiny thereof, a correct decision can be arrived at. Such exercise cannot be carried out by me under Article 226 of the Constitution of India.

In view of the aforesaid discussion, this petition stands partly allowed. Rule made absolute to aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

*Pansala

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After the judgment is pronounced Mr.M.B. Buch learned advocate appearing for IFFCO has made a request that the direction given by this Court in this Judgment may be suspended for a period of two weeks to enable them to make alternative arrangement. The learned advocate for the petitioner has objected to grant of such time. However, considering the fact that there is peculiar situation whereby IFFCO is now required to disengaged the contract labour system from the operation of stacking and loading/unloading of urea bags, they will

require some time to make alternative arrangement. In light of the request made by Mr.Buch it is required to be accepted and the directions given in this judgment are kept in abeyance till 28th October, 2002.

[AKSHAY H. MEHTA, J.]

* Pansala